

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10, SUBREGION 11**

**STARBUCKS CORPORATION**

**Employer**

**and**

**Case 03-RC-285929**

**WORKERS UNITED**

**Petitioner**

**REGIONAL DIRECTOR'S ADMINISTRATIVE REVIEW  
DECISION AND ORDER ON OBJECTION**

Based on a petition filed on November 9, 2021, and pursuant to a Decision and Direction of Elections issued by the Acting Regional Director of Region 3 on January 14, 2022,<sup>1</sup> a mail ballot election was conducted in this matter. The mail ballots were sent to eligible voters on January 31. The ballots were commingled and counted on March 9, with the following results:

Approximate number of eligible voters .....	39
Void Ballots .....	2
Votes cast for Petitioner.....	8
Votes cast against participating labor organization .....	7
Valid votes counted.....	15
Challenged ballots.....	0
Valid votes counted plus challenged ballots.....	15

On March 16, the Employer, Starbucks Corporation, timely filed an Objection to the conduct of the election along with a separate offer of proof. A copy of the Objection is attached. The Employer asserts that certain eligible voters had returned their ballots that were unaccounted for at the time of the ballot count. The Petitioner did not file a response to the Employer's Objection.

By Order dated March 23, this case was transferred from Region 3 to Region 10. By Order dated April 5, the rescheduled hearing in this matter was postponed indefinitely so that I could consider an administrative review of the Objection, offer of proof, and relevant evidence.

Pursuant to Section 102.69 of the National Labor Relations Board (NLRB) Rules and Regulations, and the NLRB Representation Proceedings Case Handling Manual (Part Two), Sections 11390 – 11397, I caused an administrative investigation and review of the Employer's Objection to be conducted.

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<sup>1</sup> All dates are for the year 2022 unless otherwise noted.

Having duly considered the Employer's Objection, offer of proof, and the relevant evidence from the case file, and as further explained below, I am sustaining, in part, the Employer's Objection to the conduct of the election and direct that all unopened mail ballots received at the Region 3 office prior to the day of the ballot count shall be processed according to the Board's regular procedures for mail ballot elections.

**Objection 1:**

**Region 3 personnel failed to process one or more timely-cast ballots that were delivered to the Regional office prior to the March 9 ballot count.**

In its Objection and offer of proof, the Employer asserts that six named employees timely cast their ballots. More specifically, the Employer details that one employee delivered a ballot to the Regional office by putting it under the office door, and five other employees mailed their ballots on various dates in February, the latest of which was mailed on February 16.

As detailed in the Decision and Direction of Elections, voters were to mail their ballots so that they would be received by the Region 3 office by close of business on February 22, and the ballot count was originally scheduled for February 23. However, on January 31, the Employer filed with the Board a Request for Review of the Acting Regional Director's Decision and Direction of Election, and the Board did not issue its Order denying that Request until March 7. Consequently, Region 3 did not hold the ballot count until March 9.

The case file shows that seven ballot envelopes were received by the Region 3 Office on February 25. Six of these ballots correspond to individuals appearing on the list of eligible voters, and the seventh ballot corresponds to an individual on the list of individuals voting subject to challenge. A review of the marked voter list used by the Board agent conducting the count reflects no marks next to any of these individuals' names – that is, the votes do not appear to have been challenged or opened and counted. The casefile contains no reason as to why the seven ballots that arrived on February 25 were not processed at the March 9 count. I note that the casefile does not reflect that any additional ballots were received prior to or after March 9.

Board law on mail ballots arriving after the return date, but before the ballot count, is well settled and has been incorporated into Section 11336.5(c) of the Casehandling Manual (Part Two) Representation Proceedings:

Ballots contained in envelopes received before the count should be counted, even if they are received after the close of business on the return date. *Kerrville Bus Co.*, 257 NLRB 176 (1981); *Premier Utility Services, LLC*, 363 NLRB No. 159, slip op. at 1 fn. 1 (2016).

The Board will generally permit mail ballots received after the due date, but before the count, to be opened and tallied. *Watkins Construction Co.*, 332 NLRB 828, 828 (2000). However, the Board customarily does not permit mail ballots received *after* the count to be opened. *Classic Valet Parking, Inc.*, 363 NLRB 249 (2015).

While the Employer appears to criticize the voter participation rate in its Objection, the Board has long held that the “majority” required by Section 9(a) of the Act for purposes of selecting a collective bargaining representative refers to a majority of those employees voting in an election. *R.C.A. Mfg. Co.*, 2 NLRB 159, 173-178 (1936). The fundamental purpose of a Board election is to provide employees with a meaningful opportunity to express their sentiments concerning representation for the purpose of collective bargaining. *Lemco Construction, Inc.*, 283 NLRB 459 (1987). The voter participation rate is not a basis to set aside or order a rerun election in this case.

Here, seven ballot envelopes were received at the Region 3 Office after the return due date but prior to the count. The Board agent conducting the count should have presented these ballots to the parties during the count, but did not do so. Because six of the unopened ballots are from eligible voters and are sufficient in number such that they may affect the results of the election, I will sustain, in part, the Employer’s Objection. I am not directing a rerun election or hearing as requested by the Employer in its Objection, but instead direct Region 3 personnel to process the seven mail ballot envelopes received on February 25 in accordance with the Board’s established count procedures for mail ballot elections.<sup>2</sup> A revised tally of ballots will then be served on the parties.

### **CONCLUSION**

The Employer’s Objection is sustained in part. The seven ballot envelopes received by Region 3 on February 25 will be presented to the parties and processed in accordance with the Board’s usual procedures, and a revised tally of ballots will then be served on the parties. The date of the ballot count shall be scheduled after consultation with the parties. If the parties are unable to agree upon the date, time, place and method of the ballot count, it shall be directed in a separate order.

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board’s Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director.

A request for review may be E-Filed through the Agency’s website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washing DC 20570-0001. A party filing a request for review must serve a

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<sup>2</sup> I find it unnecessary to address individually each voter named in the Employer’s objection. As already noted, the only uncounted ballot envelopes were received on February 25, and the names of the eligible voters pertaining to those ballots will be made known to the parties during the counting process. Should either party have further objections after the revised tally of ballots has issued, the party may avail itself of the objection process.

April 12, 2022

copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.



Dated: April 12, 2022

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LISA Y. HENDERSON  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3**

**STARBUCKS CORPORATION**

Employer

and

**WORKERS UNITED**

Petitioner

**Case No.: 03-RC-285929**

**STARBUCKS CORPORATION’S OBJECTION  
TO CONDUCT OF THE ELECTION**

Pursuant to the Rules and Regulations of the National Labor Relations Board (“NLRB”), including Section 102.69, Starbucks Corporation (“Starbucks” or “Employer”) files the following Objection to Conduct of the Election in connection with the mail ballot election in Case No. 03-RC-285929.

In response to Workers United’s (“Union”) representation petition in Case No. 03-RC-285929, the Employer opposed the holding of a mail ballot election given the well-established problems relating to mail ballot elections. The Employer asserted its position in its Statement of Position, on the record at the representation hearing, and in its post-hearing brief. On January 14, 2022, Region 3 directed a mail ballot election over the Employer’s objection. (“January 14 D&DE”). In the January 14, 2022 D&DE, the Region directed the mailing of ballots from Region 3’s office on January 30, 2022, with eligible voters to return ballots by close of business on February 22, 2022, with a virtual ballot count set to occur on February 23, 2022.

The Employer timely-filed a Request for Review, which the Board did not rule upon prior to the scheduled count on February 23, 2022. As a result, under Section 102.67(c) of the NLRB’s

Rules and Regulations, the ballots were impounded and remained unopened pending such ruling or decision. On March 7, 2022, the Board issued its Order on the Employer's Request for Review. On March 7, 2022, Region 3 informed the Parties that it was rescheduling the ballot count to March 9, 2022.

At the March 9, 2022 ballot count, Region 3 informed the Parties that ballots of only 15 of the 38 eligible voters on the Voter List were received by the Region. Thus, the Parties were informed that the ballots of 23 employees (known as partners), or 61% of eligible voters, had not arrived at the Region's office. Region 3 proceeded to open the 15 ballots and the resulting tally was 8 to 7, in favor of Union representation. Accordingly, 8 of 38 partners, 21%, decided the election for all partners.

After the ballot count, multiple partners asked their managers if their votes had been counted. Numerous partners confirmed that, despite their ballots not being counted during the count, they had in fact cast their ballots and knew specifically when and where they did so. Each of these partners voted prior to the March 9, 2022 ballot count, however, their ballots were not counted by Region 3. Nor were their ballots challenged, voided, or even acknowledged. They were simply unaccounted for.

Specifically, one partner said that (b) (6), (b) (7)(C) hand-delivered (b) (6), (b) (7)(C) ballot to Region 3's office on the morning of February 22, 2022, by placing it under Region 3's office door. (b) (6), (b) (7)(C) can confirm this through tracking data in (b) (6), (b) (7)(C) phone. The Region did not count, nor account, for this partner's ballot, which is determinative in the election.

Region 3's conduct of the election deprived Starbucks' partners of their Section 7 rights to vote on the issue of union representation.

Region 3's objectionable conduct includes the following:

## **OBJECTION 1**

Region 3 personnel engaged in election misconduct by failing to process one or more timely-cast ballots that were delivered to the Regional office prior to the March 9 ballot count.

\* \* \*

Based upon each of the foregoing Objection, the Employer respectfully submits that the election results must be set aside and a re-run election conducted. If the Regional Director does not order a re-run election administratively, the Employer requests a hearing in which to present documentary evidence and witness testimony in support of its Objection.

Respectfully submitted,

/s/ Alan I. Model

Alan I. Model

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## CERTIFICATE OF SERVICE

I certify that Starbucks Corporation's Objection to Conduct of the Election in Case No. - 3-RC-285929 was electronically filed on March 16, 2022, through the Board's website and also served via email on the following:

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